IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4938 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

INDIAN PETROCHEMICALS CORP. LTD

Versus

MANILAL BHANABHAIVASAVA

Appearance:

1. Special Civil Application No. 4938 of 1998
Mr. Kunal Nanavati for NANAVATI ASSOCIATES
for Petitioner No. 1
MR MS MANSURI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 18/11/2003

ORAL JUDGEMENT

Heard learned advocate Mr. Kunal Nanavati for

M/s. Nanavati Associates for the petitioner and Mr.M.S. Mansuri for the respondent workman. In this petition under Article 227 of the Constitution of India, the petitioner has challenged the award made by the labour court, Baroda in Reference (LCV) No. 474 of 1996 wherein the labour court has, while allowing the reference in part, ordered the first party company to reinstate the concerned workman to his original post and to pay 25 per cent of the backwages with other benefits to the concerned workman with costs quantified at Rs.500.00.

This Court (Coram : R.M. Doshit,J.) has passed the following order on 22nd April, 1999 while admitting the petition:

"Heard learned advocates for the respective parties.

Rule. Pending this petition, there shall be interim relief against the payment of back wages. By way of interim arrangement, it is directed that the respondent workman will, within a period of 15 days from today, give an undertaking to the concerned authority to the effect that he shall henceforth serve regularly. The petitioner corporation will reinstate the respondent workman on his original position. In the event the respondent workman does not attend to the duty regularly, the petitioner corporation shall have a liberty to apply for the vacation of this order. This arrangement has been made subject to the result of this petition. Ad.iterim relief granted earlier stands modified to the aforesaid extent."

Thus, while admitting the matter, this Court has directed that the respondent workman will, within a period of 15 days from the date of the order, give an undertaking to the concerned authority to the effect that he shall thenceforth serve regularly and the petitioner corporation was directed to reinstate the respondent workman on his original position. In the event the respondent workman does not attend to the duty regularly, a liberty was reserved in favour of the petitioner to apply for the vacation of the said order. Aforesaid arrangement was made subject to the result of this petition.

During the course of hearing, it was submitted by the learned advocate Mr. Kunal Nanavati for the petitioner that the respondent workman was a habitual

offender; he was used to remain absent periodically. It was also submitted by him that the respondent had remained absent for a period of 264 days in the year 1993 and even subsequent to that, he was absent. On each of the occasion of his remaining absent without prior permission, punishment was imposed by the petitioner by submitting Yadi dated 9th March,1992, Reminder Letter dated 19th February, 1994 informing him to improve his behaviour and inspite of that, there was no improvement in the behaviour of the respondent and, therefore, ultimately, he was served with a charge sheet and his increments were twice withheld with cumulative effect and on two occasions, he was placed under suspension for two and three days respectively and, therefore, it was his submission that while granting relief in favour of the respondent workman, the labour court has not given proper weightage to the past record of the respondent workman and in doing so, the labour court has erred. He also submitted that in the departmental inquiry, the respondent remained absent and, therefore, ex parte departmental inquiry was completed by the inquiry officer. He also clarified that in respect of the present misconduct, the workman was absent for fourteen days from 15.9.1995 to 29.9.1995 without prior leave and therefore regular departmental inquiry was initiated and considering his past misconduct as well as the present misconduct, ultimately, order of dismissal from service was passed against the respondent on 31.5.1995 which was challenged by the respondent before the labour court. According to his submission, all these details and facts were placed by the petitioner before the labour court but the same were not considered and appreciated by the labour court while granting relief of reinstatement with 25 per cent of the back wages for the intervening period. According to him, there was admission on the part of the respondent workman that he was earning something and, therefore, the labour court is not justified in granting back wages to the extent of 25 per cent while granting relief of reinstatement in favour of the workman and, therefore, interference is required in exercise of the powers under Article 227 of the Constitution of India.

On the other hand, learned advocate Mr. Mansuri appearing for the workman has submitted that pursuant to the directions issued by this court while admitting the petition as aforesaid, the respondent has been reinstated in service and necessary undertaking as indicated in the order has also been filed by him and from the date of his reinstatement pursuant to the aforesaid directions of this court till this date, no adverse incident has occurred in the career of the respondent workman. He

also emphasized that while passing the aforesaid order on 22nd April, 1999, liberty was reserved by this court in favour of the petitioner to apply for the vacation of the said order in the event the respondent workman does not attend to the duty regularly. However, the liberty reserved by this court while issuing the aforesaid directions has not been enjoyed by the petitioner and therefore, it cannot be said that the respondent has attended irregularly or that any adverse incident has taken place. Thus, according to his submission, right from the date of his reinstatement till this date, the respondent has been working regularly without any adverse incident. According to him, the departmental inquiry was also initiated in respect of the present misconduct. He also raised an important question that after accepting initial report from the IO, the disciplinary authority passed order on 31st May, 1995 where his past alleged misconducts were taken into account for passing an order of dismissal but before that, no opportunity was given to the workman to explain the circumstances about the past misconduct though it was considered by the disciplinary authority before passing the order of punishment and, therefore, the order of punishment based upon the past misconduct is violative of the principles of natural justice. In support of his said contention, he has placed reliance on the decision of the apex court in the matter of The State of Mysore v. Manche Gowda, reported in AIR 1964 SC 506 and has submitted that before taking into account the past misconduct, show cause notice is necessary before passing the order of punishment. According to him, no such show cause notice was given to the respondent workman by the petitioner before considering the past misconduct and before basing the order of punishment on the past misconduct. According to him, the labour court was, therefore, right in appreciating the record as well as the important aspect of the matter that the officer of the petitioner had received chit from the respondent workman about his remaining absent wherein the workman had disclosed the reason for his remaining absent because of the sickness of his own as also the sickness of his daughter. That aspect is not in dispute between the parties. Said chit was received on 20th September, 1994 and, therefore, learned advocate Mr. Mansuri submitted that looking to the misconduct of remaining absent for a period of only 15 days, punishment of dismissal from service is too harsh, disproportionate and, therefore, the labour court was justified in setting aside the order of punishment. According to him, the award made by the labour court is just and proper as it has denied back wages for the intervening period to the extent of 75 per cent

considering the gainful employment of the workman and was right in granting 25 per cent of the back wages. He also submitted that the intervening period is hardly running about eight months or so and, therefore, the award of the labour court is perfectly all right, just and proper and, therefore, this court should not interfere with such balanced award in exercise of the powers under Art. 227 of the Constitution of India.

I have considered the submissions made by the learned advocates for the parties. I have also perused the award in question made by the labour court. It is an admitted fact that the workman was working on the post of helper for a period of more than eighteen years. It is also an admitted fact that the misconduct due to which the respondent was removed from service is his absent for a period from 15.9.1995 to 29.9.1995 without prior permission. However, the workman has taken care to sent a chit on 20.9.1995. Thus, intimation was given by the workman for his remaining absent. The reason for such absence was the sickness of his own as well as the sickness of his daughter and that aspect is not in dispute between the parties. Even the IO has also made specific mention of this fact in his report. Thus, it is clear that the workman concerned had made effort to communicate the authority about the illness of himself as well as his daughter. Before the labour court, statement of claim was filed by the workman at Exh. 7 and the written statement thereto was filed by the petitioner at Ex. 12 and thereafter, certain documents were produced by both the parties and the workman has admitted the departmental inquiry vide Exh. 10. Petitioner Company also produced certain documents vide Exh. 13/1 to 13/7 and thereafter, he was examined at Exh. 14 and no oral evidence was led by the company before the labour court.

Now, as regards the submissions made by Mr. Nanavati that in view of the past record of the workman, the labour court ought not to have exercised the discretion in favour of the workman, it has to be noted that after the ex parte inquiry was completed and the inquiry report was submitted on 2nd January, 1995, the disciplinary authority was accepting the said report and passed the order of dismissal on 31st May, 1995. However, from the perusal of the order of punishment, it appears that while passing the said order of punishment, his past record has been taken into account and the past record was, thus, made the basis of the order of punishment. It is also necessary to be noted that after receiving inquiry report from the inquiry officer and before passing the order of punishment, no show cause

notice was served upon the respondent by the petitioner and this aspect is also not in dispute. It is also necessary to be noted that before considering his past record against him, no opportunity was given to the workman by the petitioner. If the past record is to be taken into consideration, then, reasonable opportunity must be given to the delinquent to show cause as to why his past record should not be considered. This aspect has been examined by the apex court in the matter of The State of Mysore v. Manche Gowda, reported in AIR 1964 SC 506. Relevant observations made by the apex court in the said judgment are reproduced as under:

" If the grounds are not given in the notice, it would be well nigh impossible for him to predicate what is operating on the mind of the authority concerned in proposing a particular punishment: he would not be in a position to explain why he does not deserve any punishment at all or that the punishment proposed is excessive. If the proposed punishment was mainly based upon the previous record of a Government servant and that was not disclosed in the notice, it would mean that the main reason for the proposed punishment was withheld from the knowledge of the Government servant. It would be no answer to suggest that every Government servant must have had knowledge of the fact that his past record would necessarily be taken into consideration by the Government in inflicting punishment on him; nor would it be an adequate answer to say that he knew as a matter of fact that the earlier punishments were imposed on him or that he knew of his past record. This contention misses the real point, namely, that what the Government servant is entitled to is not the knowledge of certain facts but the fact that those facts will be taken into consideration by the Government in inflicting punishment on him. It is not possible for him to know what period of his past record or what acts or omissions of his in a particular period would be considered. If that fact .was brought to his notice, he might explain that he had no knowledge of the remarks of his superior officers, that he had adequate explanation to offer for the alleged remarks or that his conduct subsequent to the remarks had been exemplary or at any rate approved by the superior officers. Even if the authority concerned took into consideration only the facts for which he was punished, it would be open to him to put forward

> before the said authority many mitigating circumstances or some other explanation why those punishments were given to him or that subsequent to the punishments he had served to the satisfaction of the authorities concerned till the time of the present enquiry. He may have many other explanations. The point is not whether his explanation would be acceptable, but whether he has been given an Opportunity to give his explanation. We cannot accept the doctrine of "presumptive knowledge" or that of "purposeless enquiry", as their acceptance will be subversive of the principle of "reasonable opportunity". We, therefore, hold that it is incumbent upon the authority to give the Government servant at the second stage reasonable opportunity to show cause against the proposed punishment and if the proposed punishment is also based on his previous punishments or his previous bad record, this should be included in the second notice so that he may be able to give an explanation."

In the facts and circumstances of the present case and also in view of the above observations made by the apex court, when undisputedly the second show cause notice has not been given to the respondent, even his past record which was taken into account against the workman was also not disclosed to him, the contention raised by the learned advocate Mr. Nanavati that in view of the past record of the workman, the labour court ought not to have exercised the jurisdiction in favour of the workman cannot be accepted and the same is, therefore, rejected as the action of the petitioner was violative of Art. 14 of the Constitution of India. The labour court was, therefore, justified in exercising the discretion and jurisdiction in favour of the workman while passing the award in question. This Court is also not impressed of his submission that the labour court ought not to have awarded back wages because the labour court has made the award of back wages after considering the deposition of the workman wherein he deposed that he was earning something by doing some work and therefore, the labour court considered some earning of the workman and refused back wages to the extent of 75 per cent and awarded only 25 per cent and, therefore, the labour court has rightly awarded back wages and has rightly made the award as a whole.

It is also required to be considered that the respondent has been reinstated in service pursuant to the

directions issued by this court while admitting the matter, by order dated 22nd April, 1999. After his reinstatement in the year 1999 till this date, no adverse incident has been pointed out by the petitioner because till this date, no such application has been filed by the petitioner though liberty to that effect was reserved by this court while making the said order on 22.9.1999.Therefore, the presumption will be in favour of the respondent that after his reinstatement pursuant to this Court's interim directions dated 22.9.1999, he has not committed any such similar or other misconduct. This is also another aspect for not interfering with the award of the labour court.

Learned advocate Mr. Nanavati has not been able to point out any procedural irregularity and/or jurisdictional error committed by the labour court while making the award in question. He has also not been able to point out that the findings given by the labour court are perverse or contrary to the record. Therefore, there is no substance in the petition and the same is, therefore, required to be dismissed.

In the result, this petition is dismissed. Rule is discharged. Interim relief granted earlier shall stand vacated. There shall be no order as to costs.

Dt. 18.11.2003. (H.K. Rathod,J.)

Vyas